

CSA Staff Notice 94-303***Variation, Amendment, or Revocation and Replacement of Blanket Orders Exempting Certain Counterparties from the Requirement to Submit a Mandatory Clearable Derivative for Clearing and Update on Proposed Amendments to National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives***

May 31, 2018

Introduction

The Canadian Securities Administrators (the **CSA** or **we**), except the Ontario Securities Commission (the **OSC**), are each varying, amending, or revoking and replacing, as applicable in the local jurisdiction, parallel orders of general application (in each jurisdiction, the **2018 Order**) to extend relief for certain counterparties from the clearing requirement under National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the **National Instrument**), effective August 20, 2018.

Substance and Purpose

On July 6, 2017, the CSA published CSA Staff Notice 94-301 *Blanket Orders Exempting Certain Counterparties from the Requirement to Submit a Mandatory Clearable Derivative for Clearing* indicating that amendments to the National Instrument may be necessary to clarify the scope of market participants that are subject to the requirement to clear an over-the-counter (**OTC**) derivative prescribed in Appendix A to the National Instrument.

To facilitate the rule-making process relating to those amendments, CSA members, except the OSC, issued on that day parallel orders of general application, effective October 4, 2017 (the **2017 Orders**). The 2017 Orders exempt from the clearing requirement under the National Instrument the counterparties specified in paragraphs 3(1)(b) or (c) of the National Instrument that are not already subject to the clearing requirement under paragraph 3(1)(a) on a temporary basis. The effect of the 2017 Orders extends the effective date of the clearing requirement from October 4, 2017 to August 20, 2018. In parallel, the OSC amended the National Instrument to extend the effective date of the clearing requirement until August 20, 2018 for the same counterparties as in the 2017 Orders.

Subsequently, on October 12, 2017, the CSA published *Proposed Amendments to National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives* (the **Proposed Amendments**), and *Proposed Changes to Companion Policy 94-101 Mandatory Central Counterparty Clearing of Derivatives* for a 90-day comment period that expired on January 10, 2018. The purpose of the Proposed Amendments was to refine the scope of counterparties to which the clearing requirement applies and the types of OTC derivatives that are subject to the clearing requirement.

Three comment letters were received and can be found on the websites of the Alberta Securities Commission, the Autorité des marchés financiers and the OSC. In general, the commenters suggested modifications to the interpretation of the term “*affiliated entity*” and called for a harmonized interpretation of that term throughout the OTC derivatives rules.

In view of the comments received, the CSA is considering alternative solutions to address the aims of the Proposed Amendments with respect to the scope of counterparties subject to the clearing requirement, while also addressing commenters’ calls for a harmonized interpretation of the term “*affiliated entity*” throughout the OTC derivatives rules. The CSA currently anticipates publishing for comment revised proposed amendments to the National Instrument for a second consultation period at a later date.

2018 Orders

Accordingly, CSA members, except the OSC, are extending the relief from the clearing requirement under the National Instrument for those counterparties specified in paragraphs 3(1)(b) or (c) of the National Instrument that are not already subject to the clearing requirement under paragraph 3(1)(a), until the revocation of the 2018 Orders or the coming into force of amendments to the National Instrument with respect to the scope of counterparties subject to the clearing requirement, whichever is earlier.

OSC staff position

The OSC will not be issuing an order of this nature given that orders of general application are not authorized under Ontario securities law. However, OSC staff are of the view that, while work in this area is ongoing, there is no public interest in recommending or pursuing an enforcement action against the counterparties specified in paragraphs 3(1)(b) or (c) of the National Instrument that are not already subject to the clearing requirement under paragraph 3(1)(a), for failure to comply with the clearing requirement contained in the National Instrument.

The above position of OSC staff may be withdrawn after further consideration of this matter. OSC staff expects that this position will be withdrawn on the coming into force of amendments to the National Instrument with respect to the scope of counterparties subject to the clearing requirement.

The 2018 Orders are available on the following websites of CSA members:

www.lautorite.qc.ca

www.albertasecurities.com

www.bcsc.bc.ca

www.mbsecurities.ca

nssc.novascotia.ca

www.fcnb.ca

www.fcaa.gov.sk.ca

Questions

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